



PETER M. LANCASTER
(612) 340-7811
FAX (612) 340-8856
lancaster.peter@dorsey.com

April 4, 2011

VIA ECF FILING (BY PERMISSION)

The Honorable Patrick J. Schiltz
United States District Court
14E U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

**Re: Gander Mountain Company v. Academy, Ltd., Civil File No. 11-cv-00691
Request for Expedited Hearing for Motion to Enjoin Defendant From
Proceeding With Later-Filed Parallel Lawsuit in Texas**

Dear Judge Schiltz:

Plaintiff Gander Mountain Company respectfully requests an expedited motion schedule for a motion to enjoin Defendant Academy, Ltd. from proceeding with later-filed litigation in the Southern District of Texas between the same parties over the same facts.

We understand from the calendar clerk that the next available hearing date in the ordinary course is August 2011, well after an Answer and other filings will likely be due in the Texas case. The reason for expedited consideration is to avoid the waste of court and party resources that would otherwise result from duplicative litigation over several months.

Background. On March 15, 2011, Defendant sent a letter threatening litigation if Gander Mountain did not immediately agree to stop all use of the trademark GANDER MTN. ACADEMY and to abandon its federal applications to register that trademark. Having already made a substantial investment in that and related trademarks and the associated business, an investment increasing each day, Gander Mountain felt compelled to have its rights determined as quickly as possible. On March 21, 2011, accordingly, Gander Mountain filed in this Court a Complaint seeking a declaratory judgment and, potentially, preliminary and permanent injunctive relief. Gander Mountain hoped to resolve the matter without extended litigation, but after receiving no response from Defendant, it completed service of the Complaint on March 31, 2011.

Defendant's immediate response to service was to file a mirror-image Complaint in the Southern District of Texas on April 1, 2011. Defendant seeks no relief in its Texas Complaint that it could not assert as a Counterclaim in response to Plaintiff's Complaint in this Court.



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Relief Sought By Gander Mountain. This case is similar to the case *Northwest Airlines v. American Airlines*, 989 F.2d 1002, 1004 (8th Cir. 1993), although Gander Mountain's basis for requesting an injunction is even stronger than that of the successful movant in that case. As the Eighth Circuit observed there, "The discretionary power of the federal court in which a first-filed action is pending to enjoin the parties from proceeding with a later-filed action in another federal court is firmly established." In order "to conserve judicial resources and avoid conflicting rulings," the "first-filed rule gives priority...to the party who first establishes jurisdiction." *Id.* at 1006. That rule is to be followed absent "compelling circumstances." *Id.* The relief Gander Mountain seeks, therefore, is suited for an expedited motion schedule. Under *Northwest Airlines* and related Eighth Circuit precedent, the standard for granting such relief is clear. There are no complicated fact issues for the Court to resolve. If the motion is not considered on an expedited basis, part of the purpose of the first-filed rule will be frustrated.

Proposed Schedule. Gander Mountain intends to be able to file its motion papers by this Wednesday, April 6, 2011. Gander Mountain will be able to file a Reply Memorandum expeditiously as well. We respectfully request a hearing as soon as the Court's schedule permits.

Although no appearance for Defendant has occurred in this proceeding, this letter is being served on the counsel who filed the Texas Complaint for Defendant.

Respectfully submitted,

s/ Peter M. Lancaster

Peter M. Lancaster
Counsel for Plaintiff Gander Mountain Company

PML:dbr

cc: Darin M. Klemchuk and Kelly J. Kubasta, Attorneys for Academy Ltd.